

**FILED**

**JUN 23 2006**

**RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

No. C 05-5428 MHP (pr)

**JEFFREY LEE DUVARDO,**

**Petitioner,**

**v.**

**GEORGE GIURBINO, warden,**

**Respondent.**

**ORDER TO STAY PROCEEDINGS  
AND ADMINISTRATIVELY CLOSE  
CASE**

Petitioner filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his 2002 murder convictions in Lake County Superior Court. When he filed his habeas petition, petitioner also filed a request for a stay and abeyance. The court denied the motion without prejudice to petitioner filing a new motion for a stay in which he provided certain information necessary for the court to determine whether a stay was appropriate.

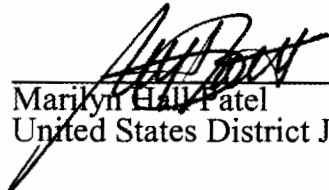
Petitioner has now filed a "motion to resubmit request to stay and obey [sic] federal habeas proceedings." Upon due consideration, the court construes the motion to be a motion for a stay and GRANTS it. (Docket # 6.) Petitioner has shown good cause for his failure to exhaust his claims first in state court before filing the federal petition, the claims are not meritless, and there does not appear to be any intentionally dilatory litigation tactic by the petitioner. See Rhines v. Weber, 125 S. Ct. 1528, 1535 (2005).

1 This action is now STAYED and the clerk shall ADMINISTRATIVELY CLOSE the  
2 action. Nothing further will take place in this action until petitioner exhausts the  
3 unexhausted claims and, within thirty days of doing so, moves to reopen this action, lift the  
4 court's stay and proceed with consideration of his habeas petition. Petitioner must act  
5 diligently to get his state court petition filed and promptly return to federal court after his  
6 state court proceedings have concluded. If petitioner does not return within thirty days of  
7 exhausting the unexhausted claim, the action or the unexhausted claims may be dismissed.  
8 See id.; Kelly v. Small, 315 F.3d 1063, 1071 (9th Cir.), cert. denied, 538 U.S. 1042 (2003).  
9 Petitioner also must exercise continuous diligence during the exhaustion process in the state  
10 courts: once his habeas petition is denied by one state court, he should file any petition at the  
11 next level state court within thirty days of the denial by the lower state court. Imposing these  
12 time limits for petitioner to expeditiously get to, through, and back from state court furthers  
13 the AEDPA's goals of encouraging finality of judgments and streamlining federal habeas  
14 proceedings. See Rhines, 125 S. Ct. at 1534.

15 Petitioner's second request for appointment of counsel is DENIED for the same  
16 reasons his first request for counsel was denied in the order upon initial review. (Docket #  
17 5.)

18 IT IS SO ORDERED.

19 DATED: June 22, 2006

  
Marilyn Hall Patel  
United States District Judge